

ASSEMBLY BILL

No. 71

Introduced by Assembly Member Jerome Horton

December 13, 2002

An act to add Division 8.6 (commencing with Section 22970) to the Business and Professions Code, to add Section 15618.5 to the Government Code, to amend Section 830.11 of the Penal Code, and to amend Sections 30436, 30449, 30473.5, 30474, and 30481 of, to amend, repeal, and add Section 30166 of, to add Sections 30019, 30163.1, 30166.1, 30474.1, and 30482 to, and to add Article 2.5 (commencing with Section 30210) and Article 5 (commencing with Section 30355) to Part 13 of Division 2 of, the Revenue and Taxation Code, relating to cigarettes and tobacco products, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 71, as introduced, Jerome Horton. State and local government.

(1) The Cigarette and Tobacco Products Tax Law requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. The Cigarette and Tobacco Products Tax Law also requires a tax imposed by that law with respect to distributions of cigarettes to be paid by distributors through the use of stamps or meter register settings, and requires that these stamps or meter register settings be affixed to each package of cigarettes sold. Existing law further provides that the possession, selling, or buying of false or fraudulent stamps or meter register settings with a tax value greater than \$750 is a crime.

This bill would create the California Cigarette and Tobacco Products Licensing Act of 2003 to provide for the licensure by the State Board of Equalization of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California. The bill would prohibit retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are licensed. The bill would authorize the board to suspend or revoke the license of any manufacturer, distributor, wholesaler, importer, or retailer of tobacco products that is in violation of the bill's provisions. The bill would prohibit a manufacturer, distributor, wholesaler, importer, or retailer from selling counterfeit cigarette and tobacco products and would provide that a violation of that prohibition is a crime. The bill would impose specified fines or imprisonment for possessing, selling, or buying false or fraudulent cigarette tax stamps.

The bill also would require manufacturers and importers of cigarette products that provide those products to distributors or wholesalers to pay the board a fee for cigarettes sold in this state.

The bill would require all moneys collected pursuant to its provisions to be deposited in the Cigarette and Tobacco Products Compliance Fund, which would be created in the State Treasury, and all funds therein would be available for appropriation by the Legislature for specified purposes. This bill would appropriate from that fund the amount of \$11,000,000, subject to specified conditions, for the 2003–04 fiscal year for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003. This bill would also require that a specified portion of moneys collected, with respect to a new tax on cigarettes as proposed to be enacted in another bill, be deposited into that fund.

(2) Existing law provides that all records, with specified exceptions, of the Department of Motor Vehicles are confidential and are not open to public inspection.

This bill would authorize the State Board of Equalization to obtain copies of photographs of California licensees from the Department of Motor Vehicles for the purpose of enforcing California's tax laws.

(3) Existing law requires the State Board of Equalization to administer various taxes and fees, including taxes with respect to cigarettes and tobacco products, alcoholic beverages, motor vehicle fuel, and diesel fuel among others.



This bill would authorize persons designated by the Executive Director of the State Board of Equalization to exercise the arrest powers of a peace officer in the enforcement of the taxes and fees administered by the State Board of Equalization.

(4) Under existing law, states' attorneys general and various tobacco product manufacturers have entered into a Master Settlement Agreement (MSA), in settlement of various lawsuits, that provides for the allocation of money to the states and certain territories. The state has entered into a memorandum of understanding providing for the allocation of the state's share of moneys to be received under the MSA between the state and counties and certain cities in the state. Existing law requires any tobacco product manufacturer selling cigarettes to consumers in California to place specified amounts into a qualified escrow fund by April 15 of each year.

This bill would require the Attorney General to develop and post on the Attorney General's Internet Web site a list of tobacco product manufacturers that are participating manufacturers under the MSA, and that have made all required escrow payments and provided related information to the Attorney General. This bill would require the Attorney General's Internet Web site to also include specified brand families, as defined, that have been identified by the tobacco product manufacturers. The bill would prohibit any tax stamp or meter impression to be affixed unless the tobacco product manufacturer and brand family in question is included on the Attorney General's list. The bill would give the Attorney General and the board specified authority and duties in this regard. This bill would impose specified penalties, applicable to a tobacco product manufacturer or distributor, for failure to comply with the various provisions of the bill, including civil penalties. The bill would also make it a misdemeanor for a tobacco product manufacturer to make certain false representations relating to the tobacco product manufacturer's responsibilities under the bill, thus creating a state-mandated local program.

(5) Existing law provides for a discount of 0.85% of the value of a stamp or meter register settings in the sale of those items to licensed distributors of cigarettes and tobacco products.

This bill would instead apply a discount in the amount of 0.39 mils per cigarette, with respect to a proposed increase in the cigarette taxes as proposed in another bill. This bill would provide that this adjustment would only become operative upon the enactment of the increase of cigarette taxes, as proposed by another bill, and would only apply that



adjustment to that portion of the value of the stamp or meter impressions attributable to that tax increase.

(6) Existing law requires that certain cigarette and tobacco products be forfeited to the state under specified circumstances, upon seizure by the board.

This bill would add to the forfeiture list cigarette and tobacco products to which cigarette tax stamps or meter impressions are affixed in violation of the specified prohibitions under the MSA.

(7) This bill would also establish procedures under the Cigarette Tax Law for imposing taxes on sellers of black market cigarettes and tobacco products, and procedures for the seizure and sale of property secured by liens for delinquencies under the Cigarette Tax Law.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Division 8.6 (commencing with Section 22970)
2 is added to the Business and Professions Code, to read:

3
4 DIVISION 8.6. CALIFORNIA CIGARETTE AND
5 TOBACCO PRODUCTS LICENSING ACT OF 2003

6
7 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

8
9 22970. This division shall be known as and may be cited as the
10 Cigarette and Tobacco Products Licensing Act of 2003.

11 22970.1. The Legislature finds and declares all of the
12 following:

13 (a) The State of California has enacted excise taxes on the
14 distribution of cigarettes and tobacco products to provide funding



1 for local and state programs, including health services,
2 antismoking campaigns, cancer research, and education programs.

3 (b) Tax revenues have declined by hundreds of millions of
4 dollars per year due, in part, to unlawful distributions and untaxed
5 sales of cigarettes and tobacco products conducted by organized
6 crime syndicates, street gangs, and international terrorist groups.

7 (c) The enforcement of California's cigarette and tobacco
8 products tax laws is necessary to collect millions of dollars in lost
9 tax revenues each year.

10 (d) The licensing of manufacturers, importers, wholesalers,
11 distributors, and retailers will help stem the tide of untaxed
12 distributions and illegal sales of cigarettes and tobacco products.

13 22970.2. The board shall administer a statewide program to
14 license manufacturers, importers, distributors, wholesalers, and
15 retailers of cigarettes and tobacco products.

16 22970.3. The board may create a Tobacco Tax Compliance
17 Task Force for the purpose of advising the board on cigarette and
18 tobacco products tax compliance issues that may include, but not
19 be limited to, representatives from the following:

20 (a) The board.

21 (b) The office of the Attorney General.

22 (c) The Franchise Tax Board.

23 (d) The Department of Alcoholic Beverage Control.

24 (e) The State Department of Health Services.

25 (f) Federal agencies necessary to coordinate programs to
26 combat tobacco tax evasion, smuggling, and counterfeiting.

27 (g) One person from each of the categories of persons required
28 by this division to have a license.

29 (h) Other states engaged in tobacco tax compliance efforts.

30 22971. For purpose of this division, the following terms shall
31 have the following meanings:

32 (a) "Board" means the State Board of Equalization.

33 (b) "Importer" means an importer as defined in Section 30019
34 of the Revenue and Taxation Code.

35 (c) "Distributor" means a distributor as defined in Section
36 30011 of the Revenue and Taxation Code.

37 (d) "Manufacturer" means a manufacturer of cigarettes sold in
38 this state.

39 (e) "Retailer" means a person who engages in this state in the
40 sale of cigarettes or tobacco products directly to the public from

- 1 a retail location. Retailer includes a person who operates vending
2 machines from which cigarettes or tobacco products are sold in
3 this state.
- 4 (f) “Retail location” means both of the following:
- 5 (1) A store or building from which cigarettes or tobacco
6 products are sold at retail.
- 7 (2) A vending machine.
- 8 (g) “Wholesaler” means a wholesaler as defined in Section
9 30016 of the Revenue and Taxation Code.
- 10 (h) “Cigarette” means a cigarette as defined in Section 30003
11 of the Revenue and Taxation Code.
- 12 (i) “License” means a license issued by the board pursuant to
13 this division.
- 14 (j) “Licensee” means any person holding a license issued by
15 the board pursuant to this division.
- 16 (k) “Sale” or “sold” means a sale as defined in Section 30006
17 of the Revenue and Taxation Code.
- 18 (l) “Tobacco products” means tobacco products as defined in
19 subdivision (b) of Section 30121 and subdivision (b) of Section
20 30131.1 of the Revenue and Taxation Code.
- 21 (m) “Unstamped package of cigarettes” means a package of
22 cigarettes that does not bear a tax stamp as required under Part 13
23 (commencing with Section 30001) of Division 2 of the Revenue
24 and Taxation Code, including a package of cigarettes that bears a
25 tax stamp of another state or taxing jurisdiction, or that bears a
26 counterfeit tax stamp.
- 27 (n) “Person” means a person as defined in Section 30010 of the
28 Revenue and Taxation Code.
- 29 (o) “Package of cigarettes” means a package containing 20
30 individual cigarettes.
- 31 (p) “Carton of cigarettes” means a container containing 10
32 packages of cigarettes.
- 33 (q) “Case of cigarettes” means a container containing 60
34 cartons of cigarettes, or 600 packages of cigarettes.
- 35 (r) (1) “Control” or “controlling” means possession, direct
36 or indirect, of the power:
- 37 (A) To vote 25 percent or more of any class of the voting
38 securities issued by a person.
- 39 (B) To direct or cause the direction of the management and
40 policies of a person, whether through the ownership of voting

1 securities, by contract (other than a commercial contract for goods
2 or nonmanagement services), or otherwise provided; however, no
3 individual shall be deemed to control a person solely on account
4 of being a director, officer, or employee of such person.

5 (2) For purposes of subparagraph (B) of this subdivision, a
6 person who, directly or indirectly, owns, controls, holds, with the
7 power to vote, or holds proxies representing 10 percent or more of
8 the then outstanding voting securities issued by another person, is
9 presumed to control such other person.

10 (3) For purposes of this division, the board may determine
11 whether a person in fact controls another person.

12 22971.1. Commencing January 1, 2006, the Bureau of State
13 Audits shall conduct a performance audit of the licensing and
14 enforcement provisions of this division, and shall report its
15 findings to the board and the Legislature by July 1, 2006. The
16 report shall include, but not be limited to:

17 (a) The actual costs of the program.

18 (b) The level of additional revenue generated by the program
19 compared to the period before its implementation.

20 (c) Tax compliance rates.

21 (d) The costs of enforcement at the varying levels.

22 (e) The appropriateness of penalties assessed in this division.

23 (f) The overall effectiveness of enforcement programs.

24 22971.2. The board shall administer and enforce the
25 provisions of this division and may prescribe, adopt, and enforce
26 rules and regulations relating to the administration and
27 enforcement of this division.

28 22971.3. (a) Nothing in this division preempts or supersedes
29 any local tobacco control law other than those related to the
30 collection of state taxes.

31 (b) A local licensing scheme may include, but is not limited to
32 the following:

33 (1) Penalties for violation of local laws regulating the retail sale
34 of cigarettes and tobacco products, including the suspension or
35 revocation of the local license.

36 (2) Provisions for the suspension or revocation of the local
37 license for violation of state laws regulating the retail sale of
38 cigarettes and tobacco products.

39

1 CHAPTER 2. LICENSE FOR RETAILERS OF CIGARETTES AND
2 TOBACCO PRODUCTS
3

4 22972. (a) Commencing July 1, 2003, a retailer shall have in
5 place and maintain a license to engage in the sale of cigarettes or
6 tobacco products. A retailer that owns or controls more than one
7 retail location shall obtain a separate license for each retail
8 location, but may submit a single application for those licenses.

9 (b) The retailer shall conspicuously display the license at each
10 retail location in a manner visible to the public.

11 (c) A license shall not be assignable or transferable. A person
12 who obtains a license as a retailer who ceases to do business as
13 specified in the license, or who never commenced business, or
14 whose license is suspended or revoked, shall immediately
15 surrender the license to the board.

16 22973. (a) An application for a license shall be filed on or
17 before the last day of December 2002, on a form prescribed by the
18 board and shall include the following:

19 (1) The name, address, and telephone number of the applicant.

20 (2) The business name, address, and telephone number of each
21 retail location. For applicants who control more than one retail
22 location, an address for receipt of correspondence or notices from
23 the board, such as a headquarters or corporate office of the retailer,
24 shall also be included on the application and listed on the license.
25 Citations issued to licensees shall be forwarded to all addressees
26 on the license.

27 (3) A statement by the applicant affirming that the applicant has
28 not been convicted of a felony and has not violated and will not
29 violate or cause or permit to be violated any of the provisions of
30 this division or any rule of the board applicable to the applicant or
31 pertaining to the manufacture, sale, or distribution of cigarettes or
32 tobacco products. If the applicant is unable to affirm this
33 statement, the application shall contain a statement by the
34 applicant of the nature of any violation or the reasons that will
35 prevent the applicant from complying with the requirements with
36 respect to the statement.

37 (4) If any other licenses or permits have been issued by the
38 board or the Department of Alcoholic Beverage Control to the
39 applicant, the license or permit number of such licenses or permits
40 then in effect.

1 (5) A statement by the applicant, under penalty of perjury, that
2 the contents of the application are complete, true, and correct.

3 (6) The signature of the applicant.

4 (7) Any other information the board may require.

5 (b) The board may investigate to determine the truthfulness and
6 completeness of the information provided in the application. The
7 board may issue a license without further investigation to an
8 applicant for a retail location if the applicant holds a valid license
9 from the Department of Alcoholic Beverage Control for that same
10 location.

11 (c) The board shall provide electronic means for applicants to
12 download and submit applications.

13 (d) A license fee of one hundred dollars (\$100) shall be
14 submitted with each application. An applicant that owns or
15 controls more than one retail location shall obtain a separate
16 license for each retail location, but may submit a single application
17 for those licenses with a license fee of one hundred dollars (\$100)
18 per location.

19 22973.1. (a) The board shall issue a license to a retailer upon
20 receipt of a completed application and payment of the fees
21 prescribed in Section 22973, unless any of the following apply:

22 (1) The retailer, or if the retailer is not an individual, any person
23 controlling the retailer, has previously been issued a license that is
24 suspended or revoked by the board for violation of any of the
25 provisions of this division.

26 (2) The application is for a license or renewal of a license for
27 a retail location that is the same retail location as that of a retailer
28 whose license was revoked or is subject to revocation proceedings
29 for violation of any of the provisions of this division, unless:

30 (A) It has been more than five years since a previous license for
31 the retail location was revoked.

32 (B) The person applying for the license provides the board with
33 documentation demonstrating that the applicant has acquired or is
34 acquiring the premises or business in an arms length transaction.
35 For purposes of this section, an “arm’s length transaction” is
36 defined as a sale in good faith and for valuable consideration that
37 reflects the fair market value in the open market between two
38 informed and willing parties, neither under any compulsion to
39 participate in the transaction. A sale between relatives, related
40 companies or partners, or a sale for the primary purpose of

1 avoiding the effect of the violations of this division that occurred
2 at the retail location, is presumed not to be made at “arm’s length.”

3 (3) The retailer, or if the retailer is not an individual, any person
4 controlling the retailer, has been convicted of a felony pursuant to
5 Section 30473 or 30480 of the Revenue and Taxation Code.

6 (4) The retailer does not possess all required permits or licenses
7 required under the Revenue and Taxation Code.

8 (b) (1) Any retailer who is denied a license may petition for a
9 redetermination of the board’s denial of the license within 30 days
10 after service upon that retailer of the notice of the denial of the
11 license. If a petition for redetermination is not filed within the
12 30-day period, the determination of denial becomes final at the
13 expiration of the 30-day period.

14 (2) Every petition for redetermination shall be in writing and
15 shall state the specific grounds upon which the petition is founded.
16 The petition may be amended to state additional grounds at
17 anytime prior to the date on which the board issues its order or
18 decision upon the petition for redetermination.

19 (3) If the petition for redetermination is filed within the 30-day
20 period, the board shall reconsider the determination of the denial
21 and, if the retailer has so requested in the petition, shall grant the
22 retailer an oral hearing and shall give the retailer at least 10 days’
23 notice of the time and place of the hearing. The board may continue
24 the hearing from time to time as may be necessary.

25 (4) The order or decision of the board upon a petition for
26 redetermination becomes final 30 days after mailing of notice
27 thereof.

28 (5) Any notice required by this subdivision shall be served
29 personally or by mail. If by mail, the notice shall be placed in a
30 sealed envelope, with postage paid, addressed to the retailer at the
31 address as it appears in the records of the board. The giving of
32 notice shall be deemed complete at the time of deposit of the notice
33 in the United States Post Office, or a mailbox, subpost office,
34 substation or mail chute or other facility regularly maintained or
35 provided by the United States Postal Service, without extension of
36 time for any reason. In lieu of mailing, a notice may be served
37 personally by delivering to the person to be served and service
38 shall be deemed complete at the time of such delivery. Personal
39 service to a corporation may be made by delivery of a notice to any



1 person designated in the Code of Civil Procedure to be served for
2 the corporation with summons and complaint in a civil action.

3 22973.2. The board shall, upon request, provide to the State
4 Department of Health Services, the office of the Attorney General,
5 a law enforcement agency, and any agency authorized to enforce
6 local tobacco control ordinances, access to the board's database of
7 licenses issued to retailers within the jurisdiction of that agency or
8 law enforcement agency. The agencies authorized by this section
9 to access the board's database shall only access and use the board's
10 database for purposes of enforcing tobacco control laws and shall
11 adhere to all state laws, policies, and regulations pertaining to the
12 protection of personal information and individual privacy.

13 22974. A retailer shall retain purchase invoices that meet the
14 requirements set forth in Section 22978.4 for all cigarettes or
15 tobacco products the retailer purchased for a period of four years.
16 If a retail location is a store or building, which includes a residence,
17 the records shall be kept at the retail location for at least one year
18 after the purchase. Invoices shall be made available upon request
19 during normal business hours for review inspection and copying
20 by the board or by a law enforcement agency. Any retailer found
21 in violation of these requirements or any person who fails, refuses,
22 or neglects to retain or make available invoices for inspection and
23 copying in accordance with this section shall be subject to
24 penalties pursuant to Section 22981.

25 22974.3. (a) Notwithstanding any other provision of this
26 division, upon discovery by the board or a law enforcement agency
27 that a retailer possesses, stores, owns, or has made a retail sale of
28 an unstamped package of cigarettes, the board or the law
29 enforcement agency shall be authorized to seize unstamped
30 packages of cigarettes at the retail location. Any cigarettes seized
31 by a law enforcement agency shall be delivered to the board within
32 seven days, unless otherwise required to be used as evidence in an
33 administrative, criminal, or civil proceeding, or as part of an
34 ongoing law enforcement investigation. Any cigarettes seized by
35 the board or delivered to the board by a law enforcement agency
36 shall be deemed forfeited and the board shall comply with
37 procedures set forth in Part 13 (commencing with Section 30436)
38 of Division 2 of Chapter 7.5 of the Revenue and Taxation Code.
39 In addition to the retailer's inventory of unstamped packages of
40 cigarettes being subject to forfeiture and seizure, the possession,

1 storage, ownership, or retail sales of unstamped packages of
2 cigarettes by a retailer shall constitute a misdemeanor punishable
3 by the following actions:

4 (1) A first violation involving seizure of a total quantity of less
5 than 20 packages of unstamped cigarettes shall be a misdemeanor
6 punishable by a fine of one thousand dollars (\$1,000) or
7 imprisonment not to exceed one year in county jail, or both the fine
8 and imprisonment.

9 (2) A second violation within five years involving a seizure of
10 a total quantity of less than 20 packages of unstamped cigarettes
11 shall be a misdemeanor punishable by a fine of not less than two
12 thousand dollars (\$2,000) but not to exceed five thousand dollars
13 (\$5,000) or imprisonment not to exceed one year in county jail, or
14 both the fine and imprisonment, and shall also result in the
15 revocation of the license.

16 (3) A first violation involving seizure of a total quantity of 20
17 packages of unstamped cigarettes or more shall be a misdemeanor
18 punishable by a fine of two thousand dollars (\$2,000) or
19 imprisonment not to exceed one year in county jail, or both the fine
20 and imprisonment.

21 (4) A subsequent violation within five years involving seizure
22 of a quantity of 20 packages of unstamped cigarettes or more shall
23 be a misdemeanor punishable by a fine of not less than five
24 thousand dollars (\$5,000) but not to exceed fifty thousand dollars
25 (\$50,000) or imprisonment not to exceed one year in county jail,
26 or both the fine and imprisonment, and shall also result in the
27 revocation of the license.

28 (b) Upon discovery by the board or a law enforcement agency
29 that a retailer possesses, stores, owns, or has made a retail sale of
30 tobacco products on which tax is due but has not been paid to the
31 board, the board or law enforcement agency is authorized to seize
32 such tobacco products at the retail location. Any tobacco products
33 seized by a law enforcement agency shall be delivered to the board
34 within seven days, unless otherwise required to be used as
35 evidence in an administrative, criminal, or civil proceeding, or as
36 part of an ongoing law enforcement operation. Any tobacco
37 products seized by the board or delivered to the board by a law
38 enforcement agency shall be deemed forfeited and the board shall
39 comply with procedures set forth in Part 13 (commencing with
40 Section 30436) of Division 2 of Chapter 7.5 of the Revenue and



Taxation Code. It shall be presumed that tax has not been paid to the board on all tobacco products in the possession of a retailer until the contrary is established by a proof of payment to the board or by a purchase invoice that shows that the retailer paid the tax included purchase price to a licensed distributor, wholesaler, manufacturer, or importer as described in Section 22978.4. The burden of proof that tax has been paid on tobacco products shall be upon the retailer in possession thereof. Possession of untaxed tobacco products on which tax is due but has not been paid as required is a violation of this division and subjects the retailer to the actions described in Section 22981.

22974.4. The board shall revoke the license, pursuant to the provisions applicable to the revocation of a license as set forth in Section 30148 of the Revenue and Taxation Code, of any retailer or any person controlling the retailer that has:

(a) Been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) Had any permit or license revoked under any provision of the Revenue and Taxation Code.

22974.5. Any retailer who fails to display a license as required in Section 22972 shall, in addition to any other applicable penalty, be liable for a penalty of five hundred dollars (\$500).

22974.6. Upon suspension or revocation of the license of a retailer by the board pursuant to this chapter, the board shall notify by E-mail all licensed distributors, wholesalers, manufacturers, and importers of the suspension or revocation within 48 hours.

22974.7. In addition to any other civil or criminal penalty provided by law, upon a finding that a retailer has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the retailer pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the cigarettes or tobacco products defined as cigarettes under this section.

1 (2) Five thousand dollars (\$5,000).

2
3 CHAPTER 3. LICENSE FOR WHOLESALERS AND DISTRIBUTORS OF
4 CIGARETTES AND TOBACCO PRODUCTS
5

6 22975. (a) In addition to licenses required pursuant to Part 13
7 (commencing with Section 30001) of Division 2 of the Revenue
8 and Taxation Code, commencing July 1, 2003, every distributor
9 and every wholesaler shall annually obtain and maintain a license
10 to engage in the sale of cigarettes or tobacco products.

11 (b) Licenses shall be valid for a calendar year period upon
12 payment of the fee prescribed in Section 22977.1, unless
13 surrendered, suspended, or revoked prior to the end of the calendar
14 year, and may be renewed each year upon payment of such fee.

15 (c) A license shall not be assignable or transferable. A person
16 who obtains a license as a distributor or as a wholesaler who ceases
17 to do business as specified in the license, or who never commenced
18 business, or whose license is suspended or revoked, shall
19 immediately surrender the license to the board.

20 22976. A distributor or a wholesaler that, at the time of
21 application, holds a valid license issued by the board pursuant to
22 Section 30140 or 30155 of the Revenue and Taxation Code may
23 be issued a license without further investigation.

24 22977. (a) An application for a license shall be on a form
25 prescribed by the board and shall include the following:

26 (1) The name, address, and telephone number of the applicant.

27 (2) The business name, address, and telephone number of each
28 location where cigarettes or tobacco products will be sold. For
29 applicants who control more than one location, an address for
30 receipt of correspondence or notices from the board, such as a
31 headquarters or corporate office, shall also be included in the
32 application and listed on the license. Citations issued to licensees
33 shall be forwarded to all addressees on the license.

34 (3) A statement by the applicant affirming that the applicant has
35 not been convicted of a felony and has not violated and will not
36 violate or cause or permit to be violated any of the provisions of
37 this division or any rule of the board applicable to the applicant or
38 pertaining to the manufacture, sale, or distribution of cigarettes or
39 tobacco products. If the applicant is unable to affirm this
40 statement, the application shall contain a statement by the

1 applicant of the nature of any violation or the reasons that will
2 prevent the applicant from complying with the requirements with
3 respect to the statement.

4 (4) If any other licenses or permits have been issued by the
5 board or the Department of Alcoholic Beverage Control to the
6 applicant, the license or permit numbers for such licenses or
7 permits then in effect.

8 (5) A statement by the applicant, under penalty of perjury, that
9 the contents of the application are complete, true, and correct.

10 (6) Signature of the applicant.

11 (7) Any other information the board may require.

12 (b) The board may investigate to determine the truthfulness and
13 completeness of the information provided in the application.

14 (c) The board shall provide electronic means for applicants to
15 download and submit applications.

16 (d) Any person or licensee convicted of a felony pursuant to
17 Section 30473 or 30480 of the Revenue and Taxation Code or any
18 person who controls such person or licensee, shall not be issued a
19 license, or if that person holds a license, that license shall be
20 revoked.

21 22977.1. (a) Every distributor and every wholesaler shall file
22 an application, as prescribed in Section 22977, by the last day of
23 March 2003. Each application shall be accompanied by a fee of
24 one thousand dollars (\$1,000) for each location. The fee shall be
25 for a calendar year and shall not be prorated. Subject to meeting
26 the requirements of this section and Section 22977.2, the board
27 shall issue a license.

28 (b) Every distributor and every wholesaler who commences
29 business after the last day of December 2002, or who commences
30 selling or distributing cigarettes or tobacco products at a new or
31 different place of business in this state after the last day of
32 December 2002, shall file with the board an application as
33 prescribed in Section 22977 at least 30 days prior to commencing
34 such business or commencing such sales or distributions; and all
35 distributors and all wholesalers that fail to timely file an
36 application for a license under subdivision (a) shall file with the
37 board an application as prescribed in Section 22977. Each
38 application shall be accompanied by a fee of one thousand dollars
39 (\$1,000) for each location. The fee shall be for a calendar year and
40 shall not be prorated. Subject to Section 22977.2, the board, within

1 30 days after receipt of an application and payment of the proper
2 fee shall issue a license.

3 22977.2. (a) The board shall issue a license to a distributor or
4 a wholesaler upon receipt of a completed application and payment
5 of the fee prescribed in Section 22977.1, unless any of the
6 following apply:

7 (1) The distributor or the wholesaler, or if the distributor or the
8 wholesaler is not an individual, any person controlling the
9 distributor or the wholesaler, has previously been issued a license
10 that is suspended or revoked by the board for violation of any of
11 the provisions of this division.

12 (2) The application is for a license or renewal of a license for
13 a distributor or a wholesaler, whose license is revoked or
14 revocation is pending, unless:

15 (A) It has been more than five years since a distributor's or a
16 wholesaler's previous license was revoked.

17 (B) The person applying for the license provides the board with
18 documentation demonstrating that the applicant has acquired or is
19 acquiring the business in an arms length transaction. For purposes
20 of this section, an "arm's length transaction" is defined as a sale
21 in good faith and for valuable consideration that reflects the fair
22 market value in the open market between two informed and willing
23 parties, neither under any compulsion to participate in the
24 transaction. A sale of the business between relatives, related
25 companies or partners, or a sale for the primary purpose of
26 avoiding the effect of the violations of state tobacco control laws
27 that were committed by the distributor or wholesaler is presumed
28 not to be made at "arm's length."

29 (3) The distributor or the wholesaler, or if the distributor or the
30 wholesaler is not an individual, any person controlling the
31 distributor or the wholesaler has been convicted of a felony
32 pursuant to Section 30473 or 30480 of the Revenue and Taxation
33 Code.

34 (b) (1) Any distributor or any wholesaler who is denied a
35 license may petition for a redetermination of the board's denial of
36 the license within 30 days after service upon that distributor or that
37 wholesaler of the notice of the denial of the license. If a petition
38 for redetermination is not filed within the 30-day period, the
39 determination of denial becomes final at the expiration of the
40 30-day period.

1 (2) Every petition for redetermination shall be in writing and
2 shall state the specific grounds upon which the petition is founded.
3 The petition may be amended to state additional grounds at
4 anytime prior to the date on which the board issues its order or
5 decision upon the petition for redetermination.

6 (3) If the petition for redetermination is filed within the 30-day
7 period, the board shall reconsider the determination of the denial
8 and, if the distributor or the wholesaler has so requested in the
9 petition, shall grant the distributor or wholesaler an oral hearing
10 and shall give the distributor or the wholesaler at least 10 days'
11 notice of the time and place of the hearing. The board may continue
12 the hearing from time to time as may be necessary.

13 (4) The order or decision of the board upon a petition for
14 redetermination becomes final 30 days after mailing of notice
15 thereof.

16 (5) Any notice required by this subdivision shall be served
17 personally or by mail. If by mail, the notice shall be placed in a
18 sealed envelope, with postage paid, addressed to the distributor or
19 the wholesaler at the address as it appears in the records of the
20 board. The giving of notice shall be deemed complete at the time
21 of deposit of the notice in the United States Post Office, or a
22 mailbox, subpost office, substation or mail chute or other facility
23 regularly maintained or provided by the United States Postal
24 Service, without extension of time for any reason. In lieu of
25 mailing, a notice may be served personally by delivering to the
26 person to be served and service shall be deemed complete at the
27 time of such delivery. Personal service to a corporation may be
28 made by delivery of a notice to any person designated in the Code
29 of Civil Procedure to be served for the corporation with summons
30 and complaint in a civil action.

31 22978. The board shall, upon request, provide to the State
32 Department of Health Services, the office of the Attorney General,
33 a law enforcement agency, and any agency authorized to enforce
34 local tobacco control ordinances, access to the board's database of
35 licenses issued to distributors and wholesalers for locations within
36 the jurisdiction of that agency or law enforcement agency. The
37 agencies authorized by this section to access the board's database
38 shall only access and use the board's database for purposes of
39 enforcing tobacco control laws and shall adhere to all state laws,

1 policies, and regulations pertaining to the protection of personal
2 information and individual privacy.

3 22978.1. All distributors and all wholesalers shall retain
4 purchase records that meet the requirements set forth in Section
5 22978.5 for all cigarettes or tobacco products purchased. The
6 records shall be maintained for a period of one year from the date
7 of purchase on the distributor's or the wholesaler's premises
8 identified in the license, and thereafter, the records shall be made
9 available for inspection by the board or a law enforcement agency
10 for a period of four years. Any distributor or any wholesaler found
11 in violation of these requirements, or any person who fails, refuses,
12 or neglects to retain or make available invoices for inspection and
13 copying in accordance with this section shall be subject to
14 penalties pursuant to Section 22981.

15 22978.2. (a) Notwithstanding any other provision of this
16 division, upon discovery by the board or a law enforcement agency
17 that a distributor possesses, stores, owns, or has made a sale of an
18 unstamped package of cigarettes bearing a counterfeit California
19 state tax stamp or that a wholesaler possesses, stores, owns, or has
20 made a sale of an unstamped package of cigarettes, the board or the
21 law enforcement agency shall be authorized to seize the
22 unstamped packages of cigarettes at the distributor's or the
23 wholesaler's location. Any cigarettes seized by a law enforcement
24 agency shall be delivered to the board within seven days, unless
25 otherwise required to be used as evidence in an administrative,
26 criminal, or civil proceeding, or as part of an ongoing law
27 enforcement investigation. Any cigarettes seized by the board or
28 delivered to the board by a law enforcement agency shall be
29 deemed forfeited and the board shall comply with procedures set
30 forth in Part 13 (commencing with Section 30436) of Division 2
31 of Chapter 7.5 of the Revenue and Taxation Code. In addition to
32 the distributor's or wholesaler's inventory of unstamped packages
33 of cigarettes being subject to seizure and forfeiture, the possession,
34 storage, ownership or sale by a distributor or wholesaler of the
35 unstamped package of cigarettes in the manner described above,
36 shall constitute a misdemeanor punishable by the following
37 actions:

38 (1) A first violation involving seizure of a total quantity of less
39 than 20 unstamped packages of cigarettes shall be a misdemeanor
40 punishable by a fine of one thousand dollars (\$1,000) or



1 imprisonment not to exceed one year in county jail, or both the fine
2 and imprisonment.

3 (2) A second violation within five years involving seizure of a
4 total quantity of less than 20 unstamped packages of cigarettes
5 shall be a misdemeanor punishable by a fine of not less than two
6 thousand dollars (\$2,000) but not to exceed five thousand dollars
7 (\$5,000) or imprisonment not to exceed one year in county jail, or
8 both the fine and imprisonment, and shall also result in the
9 revocation of the license.

10 (3) A first violation involving seizure of a total quantity of 20
11 unstamped packages of cigarettes or more shall be a misdemeanor
12 punishable by a fine of two thousand dollars (\$2,000) or
13 imprisonment not to exceed one year in county jail, or both the fine
14 and imprisonment.

15 (4) A second violation within five years involving seizure of a
16 total quantity of 20 unstamped packages of cigarettes or more shall
17 be a misdemeanor punishable by a fine of not less than five
18 thousand dollars (\$5,000) but not to exceed fifty thousand dollars
19 (\$50,000) or imprisonment not to exceed one year in county jail,
20 or both the fine and imprisonment, and shall also result in the
21 revocation of the license.

22 (b) Upon discovery by the board or a law enforcement agency
23 that a distributor or a wholesaler possesses, stores, owns, or has
24 made a sale of tobacco products on which tax is due but has not
25 been paid to the board, the board or law enforcement agency is
26 authorized to seize such tobacco products at the distributor or
27 wholesaler location. Any tobacco products seized by a law
28 enforcement agency shall be delivered to the board within seven
29 days, unless otherwise required to be used as evidence in an
30 administrative, criminal, or civil proceeding, or as part of an
31 ongoing law enforcement operation. Any tobacco products seized
32 by the board or delivered to the board by a law enforcement agency
33 shall be deemed forfeited and the board shall comply with
34 procedures set forth in Part 13 (commencing with Section 30436)
35 of Division 2 of Chapter 7.5 of the Revenue and Taxation Code.
36 It shall be presumed that tax has not been paid to the board on all
37 tobacco products in the possession of a distributor or a wholesaler
38 until the contrary is established by the distributor's proof of
39 payment to the board or by a purchase invoice that shows that the
40 wholesaler paid the tax included purchase price to a licensed

distributor, wholesaler, manufacturer, or importer as described in Section 22978.4. The burden of proof that tax has been paid on tobacco products shall be upon the distributor or wholesaler in possession thereof. Possession by a distributor or a wholesaler of tobacco products on which tax is due but has not been paid as required is a violation of this division and subjects the distributor or wholesaler to the actions described in Section 22981.

22978.3. In addition to any other civil or criminal penalty provided by law, upon a finding that a distributor or a wholesaler has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the distributor or the wholesaler pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the cigarettes or tobacco products defined as cigarettes under this section.

(2) Five thousand dollars (\$5,000).

22978.4. (a) Each distributor and each wholesaler shall include the following information on each invoice for the sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the distributor or wholesaler.

(2) The license number of the distributor or the wholesaler as provided by the board.

(3) The amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products.

(4) The name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold.

(5) An itemized listing of the cigarettes or tobacco products sold.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

1 22978.5. (a) Each distributor and each wholesaler of
2 cigarette and tobacco products subject to licensing under this
3 chapter shall maintain accurate and complete records relating to
4 the sale of those products, including, but not limited to, receipts,
5 invoices, and other records as may be required by the board, during
6 the past four years with invoices for the past year to be maintained
7 on the premises for which the license was issued, and shall make
8 these records available upon request by a the board or a law
9 enforcement agency.

10 (b) Failure of a distributor or a wholesaler to comply with this
11 section shall be a misdemeanor subject to penalties pursuant to
12 Section 22981.

13 22978.6. The board shall revoke the license, pursuant to the
14 provisions applicable to the revocation of a license as set forth in
15 Section 30148 of the Revenue and Taxation Code, of any
16 distributor or any wholesaler or any person controlling any
17 distributor or any wholesaler that has:

18 (a) Been convicted of a felony pursuant to Section 30473 or
19 30480 of the Revenue and Taxation Code.

20 (b) Had any permit or license revoked under any provision of
21 the Revenue and Taxation Code.

22 22978.7. In addition to any other civil or criminal penalty
23 provided by law, upon a finding that any distributor or any
24 wholesaler has violated any provision of this division, the board
25 may take the following actions:

26 (a) In the case of the first offense, the board may revoke or
27 suspend the license or licenses of the distributor or the wholesaler
28 pursuant to the procedures applicable to the revocation of a license
29 set forth in Section 30148 of the Revenue and Taxation Code.

30 (b) In the case of a second or any subsequent offense, in
31 addition to the action authorized under subdivision (a), the board
32 may impose a civil penalty in an amount not to exceed the greater
33 of either of the following:

34 (1) Five times the retail value of the cigarettes or tobacco
35 products defined as cigarettes under this section.

36 (2) Five thousand dollars (\$5,000).

37



1 CHAPTER 4. LICENSE AND ADMINISTRATION FEE FOR
2 MANUFACTURERS AND IMPORTERS

3
4 22979. (a) Commencing on April 1, 2003, every
5 manufacturer and every importer, as defined in subdivision (b) of
6 Section 22971, shall obtain and maintain a license to engage in the
7 sale of cigarettes. In order to be eligible for obtaining and
8 maintaining a license under this division, a manufacturer or
9 importer shall do all of the following in the manner specified by
10 the board:

11 (1) Submit to the board a list of all brand families that they
12 manufacture or import.

13 (2) Update the list of all brand families that they manufacture
14 or import whenever a new or additional brand is manufactured or
15 imported, or a listed brand is no longer manufactured or imported.

16 (3) Consent to jurisdiction of the California courts for the
17 purpose of enforcement of this division and appoint a registered
18 agent for service of process in this state and identify the registered
19 agent to the board.

20 (b) In order to be eligible for obtaining and maintaining a
21 license under this division, a manufacturer or importer that is a
22 “tobacco product manufacturer” in subdivision (i) of Section
23 104556 of the Health and Safety Code, shall do all of the following
24 in the manner specified by the board:

25 (1) Certify to the board, under penalty of perjury, that it is a
26 “participating manufacturer” as defined in subsection II(jj) of the
27 “Master Settlement Agreement” (MSA), or is in full compliance
28 with paragraph (2) of subdivision (a) of Section 104557 of the
29 Health and Safety Code.

30 (2) Submit to the board a list of all brand families that fit under
31 the category applicable to the manufacturer or importer, in
32 accordance with the following:

33 (A) Brand families that are to be counted, in the unit volume
34 and market shares determined pursuant to subsections II(z) and
35 II(mm) of the MSA and Exhibit E thereto, in calculating the
36 manufacturer’s annual payments under the MSA.

37 (B) Brand families that are to be counted in calculating the
38 manufacturer’s escrow deposits under paragraph (2) of
39 subdivision (a) of Section 104557 of the Health and Safety Code.



1 (C) The manufacturer or importer shall update the list
2 whenever a new or additional brand is manufactured or imported
3 or a listed brand is no longer manufactured or imported.

4 (c) The board shall not grant or permit the maintenance of a
5 license to any manufacturer or an importer of cigarettes that does
6 not affirmatively certify, under penalty of perjury, both at the time
7 the license is granted and annually thereafter, that all packages of
8 cigarettes manufactured or imported by that person and distributed
9 in this state fully comply with subdivision (b) of Section 30163 of
10 the Revenue and Taxation Code, and that the cigarettes contained
11 in those packages are the subject of filed reports that fully comply
12 with all requirements of the federal Cigarette Labeling and
13 Advertising Act (15 U.S.C. Sec. 13355a et seq.) for the reporting
14 of ingredients added to cigarettes.

15 (d) (1) Any manufacturer or any importer who is denied a
16 license may petition for a redetermination of the board's denial of
17 the license within 30 days after service upon that manufacturer or
18 that importer of the notice of the denial of the license. If a petition
19 for redetermination is not filed within the 30-day period, the
20 determination of denial becomes final at the expiration of the
21 30-day period.

22 (2) Every petition for redetermination shall be in writing and
23 shall state the specific grounds upon which the petition is founded.
24 The petition may be amended to state additional grounds at
25 anytime prior to the date on which the board issues its order or
26 decision upon the petition for redetermination.

27 (3) If the petition for redetermination is filed within the 30-day
28 period, the board shall reconsider the determination of the denial
29 and, if the manufacturer or the importer has so requested in the
30 petition, shall grant an oral hearing and shall give the manufacturer
31 or the importer at least 10 days' notice of the time and place of the
32 hearing. The board may continue the hearing from time to time as
33 may be necessary.

34 (4) The order or decision of the board upon a petition for
35 redetermination becomes final 30 days after mailing of notice
36 thereof.

37 (5) Any notice required by this subdivision shall be served
38 personally or by mail. If by mail, the notice shall be placed in a
39 sealed envelope, with postage paid, addressed to the manufacturer
40 or the importer at the address as it appears in the records of the

1 board. The giving of notice shall be deemed complete at the time
2 of deposit of the notice in the United States Post Office, or a
3 mailbox, subpost office, substation or mail chute or other facility
4 regularly maintained or provided by the United States Postal
5 Service, without extension of time for any reason. In lieu of
6 mailing, a notice may be served personally by delivering to the
7 person to be served and service shall be deemed complete at the
8 time of such delivery. Personal service to a corporation may be
9 made by delivery of a notice to any person designated in the Code
10 of Civil Procedure to be served for the corporation with summons
11 and complaint in a civil action.

12 22979.1. (a) An application for a license by a manufacturer
13 or by an importer shall be on a form prescribed by the board and
14 shall include the following:

15 (1) The name, address, and telephone number of the applicant.
16 The business name, address, and telephone number of the
17 corporate offices. Citations issued to licensees shall be forwarded
18 to all addressees on the license.

19 (2) License number for any other valid licenses or permits
20 issued by the board.

21 (3) Signature of the applicant under oath to verify application
22 information.

23 (4) The name, address, and telephone number of the person
24 designated by the manufacturer or the importer as its agent for
25 receipt of service of process in this state.

26 (5) Any other information the board may require.

27 (b) The board may conduct an inquiry to determine whether the
28 applicant complies with the provisions of this division.

29 (c) The board shall provide electronic means for applicants to
30 download and submit applications.

31 22979.2. (a) On or before June 1, 2003, every manufacturer
32 and every importer shall pay to the board an administration fee.
33 The amount of the administration fee shall be one cent (\$0.01) per
34 package of cigarettes (1) manufactured or imported by the
35 manufacturer or the importer and (2) shipped into this state during
36 the 2002 calendar year as reported to the board. The board shall
37 notify each manufacturer and each importer of the amount due
38 under this section.

39 (b) This section shall apply to every manufacturer and every
40 importer required to be licensed pursuant to Section 22975. All

1 manufacturers and all importers that may become eligible for
2 licensure on or after December 1, 2002, shall be notified by the
3 board of the appropriate fee due and shall pay that fee within 90
4 days of notification.

5 (c) All manufacturers and all importers that begin operations in
6 the state after enactment of this division shall be charged a fee
7 commensurate with their respective marketshare of (1) cigarettes
8 manufactured or imported by the manufacturer and (2) sold in this
9 state during the next calendar year as estimated by the board. The
10 fee shall be at an amount not less than that paid pursuant to
11 subdivision (a) by the smallest manufacturer and shall not be more
12 than that paid by the eighth largest manufacturer.

13 (d) The board shall administer this fee in accordance with the
14 Fee Collection Procedures Law, Part 30 (commencing with
15 Section 55001) of Division 2 of the Revenue and Taxation Code.

16 22979.3. The board shall, upon request, provide to the State
17 Department of Health Services, the office of the Attorney General,
18 a law enforcement agency, and any agency authorized to enforce
19 local tobacco control ordinances, access to the board's database of
20 licenses issued to manufacturers and importers for locations
21 within the jurisdiction of that agency or law enforcement agency.
22 The agencies authorized by this section to access the board's
23 database shall only access and use the board's database for
24 purposes of enforcing tobacco control laws and shall adhere to all
25 state laws, policies, and regulations pertaining to the protection of
26 personal information and individual privacy.

27 22979.4. All manufacturers and importers shall retain
28 purchase records that meet the requirements set forth in Section
29 22979.5 for all cigarettes or tobacco products purchased and other
30 records required by the board. The records shall be maintained for
31 a period of one year from the date of purchase on the
32 manufacturer's or importer's premises identified in the license,
33 and thereafter, the records shall be made available for inspection
34 by the board or a law enforcement agency for a period of four
35 years. Any manufacturer or importer found in violation of these
36 requirements, or any person who fails, refuses, or neglects to retain
37 or make available invoices for inspection and copying in
38 accordance with this section shall be subject to penalties pursuant
39 to Section 22981.

1 22979.5. (a) Each manufacturer and each importer of
2 cigarette and tobacco products subject to licensing under this
3 chapter shall maintain accurate and complete records relating to
4 the sale of those products, including, but not limited to, receipts,
5 invoices, and other records as may be required by the board, during
6 the past four years with invoices for the past year to be maintained
7 on the premises for which the license was issued, and shall make
8 these records available upon request by a representative of the
9 board or a law enforcement agency.

10 (b) Failure of a manufacturer or an importer to comply with this
11 section shall be a misdemeanor subject to penalties pursuant to
12 Section 22981.

13 22979.6. (a) Each manufacturer and each importer shall
14 include the following information on each invoice for the sale for
15 distribution, wholesale, or retail sale of cigarettes or tobacco
16 products:

17 (1) The name, address, and telephone number of the
18 manufacturer, or importer.

19 (2) The license number of the manufacturer or importer as
20 provided by the board.

21 (3) The name, address, and license number of the distributor,
22 or wholesaler, or retailer to whom cigarettes or tobacco products
23 are sold.

24 (4) An itemized listing of the cigarettes or tobacco products
25 sold.

26 (b) Each invoice for the sale of cigarettes or tobacco products
27 shall be legible and readable.

28 (c) Failure to comply with the requirements of this section shall
29 be a misdemeanor subject to penalties pursuant to Section 22981.

30 22979.7. In addition to any other civil or criminal penalty
31 provided by law, upon a finding that a manufacturer or importer
32 has violated any provision of this division, the board may take the
33 following actions:

34 (a) In the case of the first offense, the board may revoke or
35 suspend the license or licenses of the manufacturer or importer
36 pursuant to the procedures applicable to the revocation of a license
37 set forth in Section 30148 of the Revenue and Taxation Code.

38 (b) In the case of a second or any subsequent offense, in
39 addition to the action authorized under subdivision (a), the board

1 may impose a civil penalty in an amount not to exceed the greater
2 of either of the following:

3 (1) Five times the retail value of the cigarettes or tobacco
4 products defined as cigarettes under this section.

5 (2) Five thousand dollars (\$5,000).

6
7 CHAPTER 5. INSPECTIONS, PROHIBITIONS, AND PENALTIES
8

9 22980. (a) (1) Any peace officer, or board employee granted
10 limited peace officer status pursuant to paragraph (6) of
11 subdivision (a) of Section 830.11 of the Penal Code, upon
12 presenting appropriate credentials, is authorized to enter any place
13 as described in paragraph (3) and to conduct inspections in
14 accordance with the following paragraphs, inclusive.

15 (2) Inspections shall be performed in a reasonable manner and
16 at times that are reasonable under the circumstances, taking into
17 consideration the normal business hours of the place to be entered.

18 (3) Inspections may be at any place at which cigarettes or
19 tobacco products are sold, produced, or stored or at any site where
20 evidence of activities involving evasion of cigarette or tobacco
21 products tax may be discovered.

22 (4) Inspections shall be requested or conducted no more than
23 once in a 24-hour period.

24 (b) Any person that refuses to allow an inspection shall be
25 subject to the penalties imposed pursuant to Section 22981.

26 22980.1. (a) No manufacturer shall sell cigarettes to a
27 distributor, wholesaler, importer, or retailer who is not licensed
28 pursuant to this division or whose license has been suspended or
29 revoked.

30 (b) No distributor, wholesaler, or importer shall sell cigarettes
31 or tobacco products to a retailer, wholesaler, or distributor who is
32 not licensed pursuant to this division or whose license has been
33 suspended or revoked.

34 (c) No retailer, distributor, wholesaler, or importer shall
35 purchase packages of cigarettes from a manufacturer who is not
36 licensed pursuant to this division or whose license has been
37 suspended or revoked.

38 (d) No retailer, distributor, wholesaler, or importer shall
39 purchase cigarettes or tobacco products from a retailer, distributor,

1 wholesaler, or importer who is not licensed pursuant to this
2 division or whose license has been suspended or revoked.

3 (e) Each separate sale to, or by, an unlicensed retailer,
4 wholesaler, distributor, importer, or manufacturer shall constitute
5 a separate violation.

6 (f) No manufacturer, distributor, wholesaler, or importer may
7 sell cigarette and tobacco products to any retailer whose license
8 has been suspended or revoked unless all existing cigarette or
9 tobacco tax debts of the retailer for the purchase of cigarette and
10 tobacco products have been cleared, all outstanding debts owed to
11 a manufacturer, wholesaler, or distributor for cigarette products is
12 paid, and a license has been reinstated by the board. Any taxes paid
13 by a retailer to the board pursuant to this section for which a
14 distributor had already paid the taxes shall be refunded or credited
15 to that distributor. Any payment received from a retailer,
16 distributor, or wholesaler shall be credited to the outstanding debt
17 provision of this act and must be immediately reported to the board
18 by the licensee who has placed a lien as allowed by this act. The
19 board shall determine the debt status of a suspended retailer
20 licensee 25 days prior to the reinstatement of the license. A
21 wholesaler or distributor may place a lien on the retailer not later
22 than 15 days prior to the reinstatement of a suspended license.

23 (g) No importer, distributor, or wholesaler, or distributor
24 functioning as a wholesaler, or retailer, shall purchase, obtain, or
25 otherwise acquire any package of cigarettes to which a stamp or
26 meter impression may not be affixed in accordance with
27 subdivision (b) of Section 30163 of the Revenue and Taxation
28 Code, or any cigarettes obtained from a manufacturer or importer
29 that cannot demonstrate full compliance with all requirements of
30 the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec.
31 13335a et seq.) for the reporting of ingredients added to cigarettes.

32 (h) Failure to comply with the provisions of this section shall
33 be a misdemeanor subject to penalties pursuant to Section 22981.

34 22980.2. (a) A person or entity required to be licensed under
35 this division that engages in the business of selling cigarettes or
36 tobacco products in this state without a license or after a license has
37 been suspended or revoked, and each officer of any corporation
38 that so engages in business, is guilty of a misdemeanor punishable
39 as provided in Section 22981.



(b) Each day after notification by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, or retailer required to be licensed under this act offers cigarette and tobacco products for sale or exchange without a valid license for the location from which they are sold shall constitute a separate violation.

(c) Continued sales after a notification of suspension or revocation shall constitute a violation of Section 22981, and shall result in the seizure of all cigarettes and tobacco products in the possession of the person by the board or a law enforcement agency. Any cigarettes and tobacco products seized by the board or by a law enforcement agency shall be deemed forfeited.

22980.3. (a) Licenses issued pursuant to this division shall be subject to suspension or revocation for violations of the provisions of this division or the Revenue and Taxation Code as provided in this section.

(1) In addition to any applicable fines or penalties for a violation, upon first conviction of a violation a licensee shall receive a written notice from the board detailing the suspension and revocation provisions of this act. At its discretion, the board may also suspend a license for up to 30 days.

(2) In addition to any applicable fines or penalties for a violation, upon a second conviction of a violation within four years of a previous violation the license shall be revoked.

(b) The date of the occurrence of a violation shall be used to calculate the duration between subsequent violations. A violation shall be noted in the license record at the board only after judicial conviction or final adjudication of a violation. Upon updating a record for a violation triggering a suspension, the board shall serve the licensee with a notice of suspension and shall order the license holder to immediately cease the sale of cigarettes or tobacco products.

(c) Upon notice of suspension, the board shall serve the licensee with a notice of suspension and shall order the licensee to immediately cease the sale of cigarettes or tobacco products. Continued sales after the notification of suspension shall constitute a violation of the licensing provisions of this division and shall result in the revocation of a license.

(d) Upon completion of a suspension period, a license shall be reinstated by the board upon certification that all existing cigarette

1 or tobacco tax debts of the retailer for the purchase of cigarette and
2 tobacco products have been cleared, and all outstanding debts
3 owned to a manufacturer, wholesaler, or distributor for cigarette
4 products is paid.

5 (e) After a revocation, a previously licensed applicant may
6 apply for a new license after six months. The board may, at its
7 discretion, issue a new license.

8 (f) Upon updating a license record for a violation, suspension,
9 or revocation to a license of a person or entity that owns or controls
10 more than one location, the board shall send notice in writing of
11 the violations, suspensions, or revocations within 15 days of the
12 board's action to the address included in the application and listed
13 on the license for receipt of correspondence or notices from the
14 board.

15 (g) Upon suspension or revocation of a license pursuant to this
16 section, the board shall notify all licensed distributors and
17 wholesalers by E-mail within 48 hours.

18 (h) Violations by a licensee at one location shall not be
19 accumulated against other locations of that same licensee.
20 Violations accumulated against a prior owner at a licensed location
21 shall not be accumulated against a new owner at the same licensed
22 location.

23 (i) For purposes of this section, a violation includes violations
24 of the Revenue and Taxation Code relating to cigarettes and
25 tobacco products, and violations of this division. Only one
26 violation per discrete action shall be counted towards a suspension
27 or revocation of a license.

28 22981. Any violation of this division by any person, except as
29 otherwise provided, is a misdemeanor. Each offense shall be
30 punished by a fine not to exceed five thousand dollars (\$5,000), or
31 imprisonment not exceeding one year in a county jail, or both the
32 fine and imprisonment. The court shall order any fines assessed be
33 deposited in the Cigarette and Tobacco Products Compliance
34 Fund.

35 22982. Any prosecution for a violation of any of the penal
36 provisions of this division shall be instituted within four years after
37 the commission of the offense.
38



CHAPTER 6. DISPOSITION OF FUNDS

22990. (a) All moneys collected pursuant to this division shall be deposited in the Cigarette and Tobacco Products Compliance Fund, which is hereby created in the State Treasury. No moneys in the Cigarette and Tobacco Products Compliance Fund shall be used to supplant state or local General Fund money for any purpose. All funds, except as provided pursuant to subdivision (b), in the Cigarette and Tobacco Products Compliance Fund are available for expenditure, upon appropriation by the Legislature.

(b) In addition to the moneys collected pursuant to this division, an amount equal to 0.85 percent of the revenues collected pursuant to Section _____ of the Revenue and Taxation Code, less an amount equal to 99.15 percent of the total discount authorized for all distributors by Section 30166 of the Revenue and Taxation Code, shall be transferred, on a quarterly basis, from the General Fund to the Cigarette and Tobacco Products Compliance Fund.

SEC. 2. Section 15618.5 is added to the Government Code, to read:

15618.5. Notwithstanding Section 1808.5 of the Vehicle Code, the board, as a board, individually, or through its staff, may obtain copies of full face engraved pictures or photographs of licensees directly from the Department of Motor Vehicles for the purposes of enforcing the Revenue and Taxation Code.

SEC. 3. Section 830.11 of the Penal Code is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

1 (2) Persons employed by the Department of Real Estate
2 designated by the Real Estate Commissioner, provided that the
3 primary duty of these persons shall be the enforcement of the laws
4 set forth in Part 1 (commencing with Section 10000) and Part 2
5 (commencing with Section 11000) of Division 4 of the Business
6 and Professions Code. The Real Estate Commissioner may
7 designate persons under this section, who at the time of their
8 designation, are assigned to the Special Investigations Unit,
9 internally known as the Crisis Response Team.

10 (3) Persons employed by the State Lands Commission
11 designated by the executive officer, provided that the primary duty
12 of these persons shall be the enforcement of the law relating to the
13 duties of the State Lands Commission.

14 (4) Persons employed as investigators of the Investigations
15 Bureau of the Department of Insurance, who are designated by the
16 Chief of the Investigations Bureau, provided that the primary duty
17 of these persons shall be the enforcement of the Insurance Code
18 and other laws relating to persons and businesses, licensed and
19 unlicensed by the Department of Insurance, who are engaged in the
20 business of insurance.

21 (5) Persons employed as investigators and investigator
22 supervisors of the Consumer Services Division or the Rail Safety
23 and Carrier Division of the Public Utilities Commission who are
24 designated by the commission's executive director and approved
25 by the commission, provided that the primary duty of these
26 persons shall be the enforcement of the law as that duty is set forth
27 in Section 308.5 of the Public Utilities Code.

28 (6) *Persons employed by the State Board of Equalization,*
29 *Investigations Division, who are designated by the board's*
30 *executive director, provided that the primary duty of these persons*
31 *shall be the enforcement of laws administered by the State Board*
32 *of Equalization.*

33 (b) Notwithstanding any other provision of law, persons
34 designated pursuant to this section shall not carry firearms.

35 (c) Persons designated pursuant to this section shall be included
36 as "peace officers of the state" under paragraph (2) of subdivision
37 (c) of Section 11105 for the purpose of receiving state summary
38 criminal history information and shall be furnished that
39 information on the same basis as peace officers of the state
40 designated in paragraph (2) of subdivision (c) of Section 11105.



SEC. 4. Section 30019 is added to the Revenue and Taxation Code, to read:

30019. “Importer” means any purchaser for resale in the United States of cigarettes manufactured outside of the United States.

SEC. 5. Section 30163.1 is added to the Revenue and Taxation Code, to read:

30163.1. (a) The following definitions shall apply for purposes of this section:

(1) “Brand family” means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers including, but not limited to, “menthol,” “lights,” “kings,” and “100s.”

(2) “Cigarette” has the same meaning as in subdivision (d) of Section 104556 of the Health and Safety Code and includes tobacco products defined as a cigarette under that subdivision.

(3) “MSA” means the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code.

(4) “Participating manufacturer” has the same meaning as defined in subsection II(jj) of the MSA.

(5) “Tobacco product manufacturer” has the same meaning as in subdivision (i) of Section 104556 of the Health and Safety Code.

(b) No person shall affix, or cause to be affixed, any tax stamp or meter impression to a package of cigarettes pursuant to subdivision (a) of Section 30163, or pay the tax levied pursuant to Sections 30123 and 30131.2 on a tobacco product defined as a cigarette under this section, unless the brand family of the cigarettes or tobacco product, and the tobacco product manufacturer that makes or sells the cigarettes or tobacco product, are included on the list posted by the Attorney General pursuant to subdivision (c).

(c) (1) Not later than 60 days after the effective date of the act adding this section, and annually thereafter, on May 15, the Attorney General shall develop and post on the Attorney General’s Internet Web site a list that includes both of the following:

(A) All tobacco product manufacturers that have complied with subdivision (d).

1 (B) All brand families, and only brand families, identified by
2 tobacco product manufacturers under subparagraph (B) of
3 paragraph (1) of subdivision (d).

4 (2) The Attorney General shall not include on the list required
5 by this subdivision any tobacco product manufacturers or brand
6 families excluded or removed pursuant to subdivision (e). The
7 Attorney General shall update the list as necessary, and shall
8 promptly provide distributors with written notice of each tobacco
9 product manufacturer and brand family that the Attorney General
10 has added to, or excluded or removed from, the list. Distributors
11 shall provide the Attorney General with a current address for the
12 receipt of written notice by electronic mail.

13 (d) (1) In order for a tobacco product manufacturer and its
14 brand families to be included on the list required by subdivision
15 (c), the manufacturer shall do all of the following, in the manner
16 specified by the Attorney General:

17 (A) Certify to the Attorney General that it is a participating
18 manufacturer, or is in full compliance with paragraph (2) of
19 subdivision (a) of Section 104557 of the Health and Safety Code.

20 (B) Submit to the Attorney General a list of all brand families
21 that fit under the category applicable to the manufacturer, in
22 accordance with the following:

23 (i) Brand families that are to be counted, in the unit volume and
24 market shares determined pursuant to subsections II(z) and II(mm)
25 of the MSA and Exhibit E thereto, in calculating the
26 manufacturer's annual payments under the MSA.

27 (ii) Brand families that are to be counted, in calculating the
28 manufacturer's escrow payments under paragraph (2) of
29 subdivision (a) of Section 104557 of the Health and Safety Code.

30 (C) Certify to the Attorney General that it is in compliance with
31 subdivision (i), if applicable to the manufacturer.

32 (2) A tobacco product manufacturer may update the list that it
33 submits to the Attorney General pursuant to subparagraph (B) of
34 paragraph (1).

35 (3) The Attorney General shall provide each tobacco product
36 manufacturer that has provided all certifications and other
37 information required by paragraph (1) with a written
38 acknowledgment of receipt within seven business days after
39 receiving the certifications and other materials. The Attorney
40 General shall provide any distributor, at its request, with a copy of

1 the most recent written acknowledgment of receipt provided to the
2 tobacco product manufacturer.

3 (e) (1) The Attorney General may exclude or remove from the
4 list required by subdivision (c) a tobacco product manufacturer or
5 any of its brand families, based on a determination that the
6 manufacturer is not a participating manufacturer and has not made
7 all escrow payments required by paragraph (2) of subdivision (a)
8 of Section 104557 of the Health and Safety Code, in accordance
9 with that subdivision, or has not complied with subdivision (i).
10 Before the exclusion or removal may take effect, the Attorney
11 General shall notify the manufacturer of this determination.

12 (2) Upon receiving notice from the Attorney General pursuant
13 to paragraph (1), the manufacturer may challenge the Attorney
14 General's determination as erroneous, and may seek relief from
15 the determination, by filing a petition for writ of mandate pursuant
16 to Section 1085 of the Code of Civil Procedure for that purpose in
17 the Superior Court for the County of Sacramento, or as otherwise
18 provided by law. The filing of the petition shall operate to stay the
19 Attorney General's determination, if the manufacturer has paid
20 into escrow the full amount of any deficiency in the escrow
21 payments that the Attorney General has determined the tobacco
22 product manufacturer was required to have made under paragraph
23 (2) of subdivision (a) of Section 104557 of the Health and Safety
24 Code, including any installment payments required under
25 subdivision (i), pending final resolution of the action.

26 (f) (1) In addition to any other civil or criminal penalty
27 provided by law, upon a finding that a distributor has violated
28 subdivision (b), the board may take the following actions:

29 (A) In the case of the first offense, the board may revoke or
30 suspend the license or licenses of the distributor pursuant to the
31 procedures applicable to the revocation of a license set forth in
32 Section 30148.

33 (B) In the case of a second or any subsequent offense, in
34 addition to the action authorized under subparagraph (A), the
35 board may impose a civil penalty in an amount not to exceed the
36 greater of either of the following:

37 (i) Five times the retail value of the cigarettes or tobacco
38 products defined as cigarettes under this section.

39 (ii) Five thousand dollars (\$5,000).

(2) A distributor in any action for a violation of subdivision (b) shall have a defense provided that either of the following is true:

(A) At the time of the violation, the cigarettes or tobacco products claimed to be the subject of the alleged violation belonged to a brand family that was included on the list required by subdivision (c).

(B) At the time of the violation, the distributor possessed a copy of the Attorney General's most recent written acknowledgment of receipt of the certifications and other information required as a condition of including the brand family on the list required by subdivision (c).

(3) The defense described in subparagraph (B) of paragraph (2) shall not be available to a distributor if, at the time of the violation, the Attorney General had provided the distributor with written notice that the brand family had been excluded or removed from the list required by subdivision (c), or the distributor failed to provide the Attorney General with a current address for the receipt of written notice through electronic mail as required by paragraph (2) of subdivision (c).

(g) If a distributor affixes a stamp or meter impression to a package of cigarettes under subdivision (a) of Section 30163, or pays the tax levied under Sections 30123 and 30131.2 on a tobacco product defined as a cigarette under this section, during the period between the date on which the brand family of the cigarettes or tobacco product was excluded or removed from the list required by subdivision (c) and the date on which the distributor received notice of the exclusion or removal under paragraph (2) of subdivision (c), then both of the following shall apply:

(1) The distributor shall be entitled to a credit for the tax paid by the distributor with respect to the cigarettes to which the stamp or meter impression was affixed. The distributor shall comply with regulations prescribed by the board regarding refunds and credits that are adopted pursuant to Section 30177. If the distributor has sold the cigarettes to a wholesaler or retailer, and has received payment from the wholesaler or retailer, the distributor shall provide the credit to the wholesaler or retailer.

(2) The brand family shall not be included on or restored to the list until the tobacco product manufacturer has reimbursed the distributor for the cost to the distributor of the cigarettes or tobacco

1 product to which the stamp or meter impression was affixed, or the
2 tax paid, during that period.

3 (h) (1) Pursuant to Section 30454, the board may require those
4 distributors that affix stamps or meter impressions to packages of
5 cigarettes under subdivision (a) of Section 30161, or that pay the
6 tax levied under Sections 30123 and 30131.2 on a tobacco product
7 defined as a cigarette under this section, to submit all information
8 necessary to enable the Attorney General to determine whether a
9 tobacco product manufacturer has made all escrow payments
10 required by paragraph (2) of subdivision (a) of Section 104557 of
11 the Health and Safety Code, if applicable to the manufacturer, and
12 has complied with subdivision (i), if applicable to the
13 manufacturer.

14 (2) The Attorney General may require tobacco product
15 manufacturers to submit all information that the Attorney General
16 deems necessary to enable the Attorney General to determine
17 whether a manufacturer has made all escrow payments required by
18 paragraph (2) of subdivision (a) of Section 104557 of the Health
19 and Safety Code, and has complied with subdivision (i) and with
20 paragraph (2) of subdivision (g), if applicable to the manufacturer.

21 (i) (1) The Attorney General may require each tobacco
22 product manufacturer subject to the requirements of paragraph (2)
23 of subdivision (a) of Section 104557 of the Health and Safety Code
24 to make the escrow payments required by that paragraph in
25 quarterly installments during the year in which the sales covered
26 by those payments are made.

27 (2) Each tobacco product manufacturer subject to the
28 requirements of paragraph (2) of subdivision (a) of Section
29 104557 of the Health and Safety Code shall do all of the following:

30 (A) Appoint a registered agent for service of process in the state
31 and identify the registered agent to the Attorney General.

32 (B) Certify, under penalty of perjury, that all escrow payments
33 required by paragraph (2) of subdivision (a) of Section 104557 of
34 the Health and Safety Code have been made by all other tobacco
35 product manufacturers that previously made or sold brand families
36 identified under subdivision (d), or brand styles included within
37 those brand families. However, if the brand family or brand style
38 was made or sold by the manufacturer making the certification
39 before the effective date of this section, the manufacturer shall be

1 required only to identify those predecessor manufacturer or
2 manufacturers.

3 (C) Provide to each distributor to whom it sells or ships
4 cigarettes, or a tobacco product defined as a cigarette under this
5 section, a copy of each acknowledgment of receipt provided to the
6 manufacturer by the Attorney General under paragraph (3) of
7 subdivision (d).

8 (j) Any tobacco product manufacturer that falsely represents
9 any of the following to any person shall be guilty of a misdemeanor
10 for each false representation:

11 (1) Any information required under subdivision (d).

12 (2) That the tobacco product manufacturer is a participating
13 manufacturer.

14 (3) That the tobacco product manufacturer or any other person
15 has made any or all escrow payments required by paragraph (2) of
16 subdivision (a) of Section 104557 of the Health and Safety Code,
17 if applicable to the manufacturer.

18 (4) That it has complied with subdivision (i), or with paragraph
19 (2) of subdivision (g), if applicable to the manufacturer.

20 (k) The board and the Attorney General may exchange
21 information as is reasonably necessary for the enforcement and
22 administration of this section.

23 (l) The Attorney General may adopt rules and regulations for
24 the administration and enforcement of this section. The rules and
25 regulations may establish procedures for including in the list
26 described in subdivision (c) tobacco product manufacturers that
27 are not participating manufacturers and were not required to make
28 escrow payments under paragraph (2) of subdivision (a) of Section
29 104557 of the Health and Safety Code, for sales made during any
30 preceding calendar year, and brand families of those
31 manufacturers.

32 SEC. 6. Section 30166 of the Revenue and Taxation Code is
33 amended to read:

34 30166. (a) Stamps and meter register settings shall be sold at
35 their denominated values less 0.85 percent to licensed distributors.
36 Payment for stamps or meter register settings shall be made at the
37 time of purchase, provided that a licensed distributor, subject to the
38 conditions and provisions of this article, may be permitted to defer
39 payments therefor.

1 **(b)** *This section shall cease to be operative upon the operative*
2 *date of the tax imposed under Article 4 (commencing with Section*
3 *_____)* *of Chapter 2 of this part.*

4 SEC. 7. Section 30166 is added to the Revenue and Taxation
5 Code, to read:

6 30166. (a) Stamps and meter register settings shall be sold to
7 licensed distributors at their denominated values less a discount,
8 applied as provided in subdivision (c), equivalent to .39 mills
9 (\$0.00039) per cigarette.

10 (b) The board may revise the discount authorized by
11 subdivision (a) upon the renewal of the Cigarette Tax Stamp
12 Contract to reflect any changes in the average actual costs
13 associated with the application of stamps and meter impressions
14 to cigarette packages as determined in accordance with Section
15 30166.1.

16 (c) The discount authorized by this section shall only apply to
17 that portion of the stamps and meter register settings attributable
18 to the taxes imposed pursuant to Section _____. The discount
19 authorized by this section may not be applied to that portion of the
20 stamps and meter impressions attributable to the taxes imposed
21 under Sections 30101, 30123, and 30131.2.

22 (d) Payment for stamps or meter register settings shall be made
23 at the time of purchase, provided that a licensed distributor, subject
24 to the conditions and provisions of this article, may be permitted
25 to defer payments therefor.

26 (e) This section shall become operative upon the operative date
27 of the tax imposed under Article 4 (commencing with Section
28 _____) of Chapter 2 of this part.

29 SEC. 8. Section 30166.1 is added to the Revenue and Taxation
30 Code, to read:

31 30166.1. No later than July 1, 2004, the board shall submit a
32 report to the Legislature that evaluates the average actual costs,
33 including labor for applying indicia or impressions, bonding,
34 warehousing, and leasing stamping equipment, including case
35 cutters and packers, associated with applying stamps or meter
36 impressions to cigarette packages. This report shall be updated
37 every two years.

38 SEC. 9. Article 2.5 (commencing with Section 30210) is
39 added to Chapter 4 of Part 13 of Division 2 of the Revenue and
40 Taxation Code, to read:

1 Article 2.5. Payment by Unlicensed Persons

2
3 30210. If any person becomes a cigarette or tobacco products
4 distributor without first securing a license, the tax, and applicable
5 penalties and interest, if any, become immediately due and payable
6 on account of all cigarettes or tobacco products distributed. All
7 cigarettes or tobacco products manufactured in this state or
8 transported to this state, and no longer in the possession of the
9 unlicensed distributor, are considered to have been distributed.

10 30211. The board shall forthwith ascertain as best it may the
11 amount of the cigarettes or tobacco products distributed and shall
12 determine immediately the tax on that amount, adding to the tax
13 a penalty of 25 percent of the amount of tax or five hundred dollars
14 (\$500), whichever is greater, and shall issue a jeopardy
15 determination to the unlicensed person pursuant to Section 30241
16 and give the unlicensed person notice per Section 30244 of the
17 Cigarette and Tobacco Products Tax Law. However, where the
18 board determines that the failure to secure a license was due to
19 reasonable cause, the penalty may be waived. Sections 30242 and
20 30243 shall be applicable with respect to the finality of the
21 determination and the right of the unlicensed person to petition for
22 a redetermination.

23 Any person seeking to be relieved of the penalty shall file with
24 the board a statement under penalty of perjury setting forth the
25 facts upon which he or she bases the claim for relief.

26 30212. The board shall forthwith collect the tax, penalty, and
27 interest due from the unlicensed person by seizure and sale of
28 property in the manner prescribed for the collection of a delinquent
29 monthly tax.

30 30213. In the suit, a copy of the jeopardy determination
31 certified by the board shall be prima facie evidence that the
32 unlicensed person is indebted to the state in the amount of the tax,
33 penalties, and interest computed as prescribed by Section 30223.

34 30214. The foregoing remedies of the state are cumulative.

35 30215. No action taken pursuant to this article relieves the
36 unlicensed person in any way from the penal provisions of this
37 part.

38 SEC. 10. Article 5 (commencing with Section 30355) is
39 added to Chapter 5 of Part 13 of Division 2 of the Revenue and
40 Taxation Code, to read:

Article 5. Seizure and Sale

30355. Whenever any person is delinquent in the payment of the obligations imposed under this part, the board or its authorized representative may seize any property, real or personal, subject to the lien of the tax and thereafter sell the property, or a sufficient part of it, at public auction to pay the tax due together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

30356. Notice of the sale and the time and place thereof shall be given in writing at least 20 days before the date set for the sale to the delinquent person and to all persons who have an interest of record in the property seized. The notice shall be personally served or enclosed in an envelope addressed to the person at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property. The notice shall contain a description of the property to be sold, a statement of the amount due, including tax, penalties, interest, and costs, the name of the person, and the further statement that unless the amount is paid on or before the time fixed in the notice of sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

30357. At any sale the board or its authorized agent shall sell the property in accordance with the law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the taxpayer.

1 30358. If upon any sale the moneys received exceed the
2 amount due to the state from the taxpayer, the board shall return
3 the excess to the taxpayer and obtain his or her receipt. If any
4 person having an interest in or lien upon the property files with the
5 board prior to the sale notice of his or her interest or lien, the board
6 shall withhold payment of any excess pending a determination of
7 the rights of the respective parties to the excess moneys by a court
8 of competent jurisdiction. If for any reason the receipt of the
9 taxpayer is not available, the board shall deposit the excess moneys
10 with the Controller, as trustee for the taxpayer, his or her heirs,
11 successors, or assigns.

12 SEC. 11. Section 30436 of the Revenue and Taxation Code is
13 amended to read:

14 30436. The following property, upon seizure by the board, is
15 hereby forfeited to the State of California:

16 (a) Cigarettes or tobacco products transported upon the
17 highways, roads, or streets of this state in violation of the
18 provisions of Section 30431 or Section 30432.

19 (b) Cigarettes not contained in packages to which are affixed
20 California cigarette tax stamp or meter impressions or tobacco
21 products upon which the tobacco products surtax has not been
22 paid, which are offered for sale, possessed, kept, stored, or owned
23 by any person with the intent of the person to sell the cigarettes or
24 tobacco products without payment of the taxes imposed by this
25 part.

26 (c) Any cigarette or tobacco product vending machine,
27 together with the cigarettes, tobacco products, money or other
28 contents thereof, ~~which~~ *that* has been loaded in whole or in part
29 with packages of cigarettes which do not have California cigarette
30 tax stamps or meter impressions affixed or tobacco products upon
31 which the tobacco products surtax has not been paid.

32 (d) Cigarettes contained in packages to which are affixed
33 California cigarette tax stamps or meter impressions in violation
34 of Section 30163.

35 (e) *Cigarettes or tobacco products to which are affixed*
36 *California cigarette tax stamps or meter impressions, or for which*
37 *tax is paid pursuant to Sections 30123 and 30131.2, in violation*
38 *of Section 30163.1, regardless of whether the violation is subject*
39 *to the defense described in paragraph (2) of subdivision (f) of*
40 *Section 30163.1.*



SEC. 12. Section 30449 of the Revenue and Taxation Code is amended to read:

30449. ~~Any~~ (a) *Except as provided in subdivisions (b) and (c), any property, except money, forfeited to the state under this chapter shall be sold by the board at public auction. Notice of such sale shall be given by posting a written notice of the time and place of sale in three public places in the county where the property is to be sold for not less than five days nor more than ten 10 days before the sale. If the board is unable to sell any property forfeited to the state under this part or, if the board determines that the property is unsalable it may destroy such property.*

(b) *Any property forfeited to the state pursuant to subdivision (e) of Section 30436 shall be destroyed.*

(c) *Any cigarettes forfeited to the state pursuant to subdivision (b) of Section 30436 shall be destroyed.*

(d) *Any cigarettes or tobacco products forfeited to the state pursuant to Division 8.6 (commencing with Section 22970) of the Business and Professions Code shall be destroyed.*

(e) *A record shall be kept of all property destroyed pursuant to this section showing the nature of the property, the quantity, the reason for, and the manner of destruction. The proceeds of the sale and any money forfeited to the state shall be deposited in the State Treasury to the credit of the General Fund.*

SEC. 13. Section 30473.5 of the Revenue and Taxation Code is amended to read:

30473.5. (a) *Any person who possesses, sells, or offers to sell, or buys or offers to buy, any false or fraudulent stamps or meter impressions provided for or authorized under this part with a tax value greater than seven hundred fifty dollars (\$750) is guilty of a misdemeanor; in a quantity of less than 2,000 is guilty of a misdemeanor; punishable by a fine not to exceed five thousand dollars (\$5,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment.*

(b) *Any person who possesses, sells, or offers to sell, or buys or offers to buy any false or fraudulent stamps or meter impressions provided for or authorized under this part in a quantity of 2,000 or greater, is guilty of a misdemeanor, punishable by a fine not to exceed fifty thousand dollars (\$50,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment. The court shall order any fines assessed be*

1 *deposited in the Cigarette and Tobacco Products Compliance*
2 *Fund.*

3 *(c) The board shall destroy any stamps seized under this*
4 *section.*

5 SEC. 14. Section 30474 of the Revenue and Taxation Code is
6 amended to read:

7 30474. (a) Any person who knowingly possesses, or keeps,
8 stores, or retains for the purpose of sale, or sells or offers to sell,
9 any package of cigarettes to which there is not affixed the stamp
10 or meter impression required to be affixed under this part, when
11 those cigarettes have been obtained from any source whatever, is
12 guilty of a misdemeanor and shall for each offense be fined not
13 more than one thousand dollars (\$1,000), or be imprisoned for not
14 exceeding one year in a county jail, or be subject to both fine and
15 imprisonment, in the discretion of the court. ~~It~~

16 (b) In addition to the fine or sentence, or both, each person
17 convicted under this section shall pay one hundred dollars (\$100)
18 for each carton of 200 cigarettes, or portion thereof, knowingly
19 possessed, or kept, stored, or retained for the purpose of sale, or
20 sold or offered for sale in violation of this section, as determined
21 by the court. The court shall direct that 50 percent of the penalty
22 assessed be transmitted to the local prosecuting jurisdiction, to be
23 allocated for costs of prosecution, and 50 percent of the penalty
24 assessed be transmitted to the State Board of Equalization.

25 (c) *This section does not apply to a licensed distributor that*
26 *possesses, keeps, stores, or retains cigarettes before the necessary*
27 *stamp or meter impression is affixed.*

28 SEC. 15. Section 30474.1 is added to the Revenue and
29 Taxation Code, to read:

30 30474.1. (a) Notwithstanding any other provision of law, the
31 sale or possession for sale of counterfeit tobacco products, or the
32 sale or possession for sale of counterfeit cigarettes by a
33 manufacturer, importer, distributor, wholesaler, or retailer shall
34 result in the seizure of the product by the board or any law
35 enforcement agency and shall constitute a misdemeanor
36 punishable as follows:

37 (1) A violation with a total quantity of less than two cartons of
38 cigarettes shall be a misdemeanor punishable by a fine not to
39 exceed five thousand dollars (\$5,000), or imprisonment not to
40 exceed one year in a county jail, or both the fine and the



1 imprisonment, and shall also result in the revocation by the board
2 of the manufacturer, distributor, or wholesale license.

3 (2) A violation with a quantity of two cartons of cigarettes or
4 more shall be a misdemeanor punishable by a fine not to exceed
5 fifty thousand dollars (\$50,000) or imprisonment not to exceed
6 one year in a county jail, or both the fine and imprisonment, and
7 shall also result in the revocation by the board of the manufacturer,
8 distributor, or wholesaler license.

9 (b) A court shall consider a defendant's ability to pay when
10 imposing fines pursuant to this section.

11 (c) For the purposes of this section, counterfeit cigarette and
12 tobacco products include cigarette and tobacco products that have
13 false manufacturing labels or with counterfeit tax stamps or a
14 combination thereof.

15 (d) The board shall seize and destroy any cigarettes or other
16 tobacco products forfeited to the state under this section.

17 SEC. 16. Section 30481 of the Revenue and Taxation Code is
18 amended to read:

19 30481. Any prosecution for violation of any of the penal
20 provisions of this part shall be instituted within ~~three~~ six years after
21 commission of the offense ~~or within two years after the violation~~
22 ~~is discovered, whichever is later.~~

23 SEC. 17. Section 30482 is added to the Revenue and Taxation
24 Code, to read:

25 30482. Any person convicted of a misdemeanor or felony
26 under this part may be charged the costs of investigation and
27 prosecution at the discretion of the court.

28 All moneys remitted to the board under this part shall be
29 transmitted to the Treasurer who shall deposit it into the State
30 Treasury and credit it to the Cigarette Tax Fund.

31 SEC. 18. The amount of eleven million dollars (\$11,000,000)
32 shall be appropriated from the Cigarette and Tobacco Products
33 Compliance Fund during the 2003–04 fiscal year to the State
34 Board of Equalization for the purpose of implementing, enforcing,
35 and administering the California Cigarette and Tobacco Products
36 Licensing Act of 2003, subject to the following provisions:

37 (a) Spending under the appropriation made by this subdivision
38 shall be limited solely to revenues in the fund that are derived from
39 fees imposed on cigarette and tobacco product manufacturers,
40 wholesalers, distributors, importers, and retailers.

1 (b) Of the total amount appropriated under this subdivision,
2 five million four hundred thousand dollars (\$5,400,000) is
3 available for reimbursement to the Department of Justice through
4 an interagency agreement with the board for investigation and
5 enforcement assistance.

6 (c) The expenditure of any funds from the appropriation made
7 by this subdivision shall require the prior approval of the Director
8 of Finance. The amounts appropriated may be approved for
9 expenditure on an allotment basis and shall be limited to the
10 amounts necessary to carry out the operating and staffing plans for
11 the implementation of the California Cigarette and Tobacco
12 Products Licensing Act of 2003 as approved by the Department of
13 Finance. The Department of Finance shall notify the Joint
14 Legislative Budget Committee of its approval of any expenditure
15 authorization within 10 days of that approval.

16 SEC. 19. The provisions of this act are severable. If any
17 provision of this act or its application is held invalid, that invalidity
18 shall not affect other provisions or applications that can be given
19 effect without the invalid provision or application.

20 SEC. 20. No reimbursement is required by this act pursuant
21 to Section 6 of Article XIII B of the California Constitution
22 because the only costs that may be incurred by a local agency or
23 school district will be incurred because this act creates a new crime
24 or infraction, eliminates a crime or infraction, or changes the
25 penalty for a crime or infraction, within the meaning of Section
26 17556 of the Government Code, or changes the definition of a
27 crime within the meaning of Section 6 of Article XIII B of the
28 California Constitution.

29 SEC. 21. This act is an urgency statute necessary for the
30 immediate preservation of the public peace, health, or safety
31 within the meaning of Article IV of the Constitution and shall go
32 into immediate effect. The facts constituting the necessity are:

33 In order to make the necessary statutory changes to address the
34 economic losses associated with black market sales of cigarettes
35 and tobacco products at the earliest possible time, it is necessary
36 that this act take effect immediately.

